IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 26623 of 2005

Between:

Posini Babu Rao

..... PETITIONER

AND

The District Collector (Civil Supplies),

Visakhapatnam and another

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

The petitioner questions the memo issued by the 1st respondent dated 01.10.2005 in C.C.No.60/2005 CSR5, imposing a condition to furnish bank guarantee in favour of the 1st respondent for release of the three vehicles along with oil and one with empty vehicle by giving third party security. It is stated that when the condition has been imposed for release of the empty vehicle No.AP 31W 6797 on furnishing third party security, there is no justification in insisting upon furnishing bank guarantee in respect of other three vehicles viz. AP 31W9979, AP31U1589 and AP31V9809 along with oil, worth of
Rs.3,77,940-95, 3,82,913-85 and 76,000-00 respectively. It is further stated that initiation of proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') itself is illegal and arbitrary as admittedly the petitioner is a transport contractor in respect of Hindustan Petroleum Corporation Limited and the petitioner has not violated any of the terms and conditions of the transport contract and also any of the control orders issued under the Act.

It is stated that the said oil tankers have been seized only on the allegation of adulteration, but, in fact, the samples sent to the Chemical Examiner found that oil is not adulterated.

I am not inclined to express any opinion as to whether the oil has been adulterated or not, as enquiry is pending before the 1st respondent under Section 6-A of the Act. Only the question that arises for consideration is whether the imposition of the condition to furnish bank guarantee for the release of the tankers with oil is reasonable or justified.

It is stated that the petitioner is not the owner of the oil and the owner of the oil is Hindustan Petroleum Corporation Limited and the petitioner is only a transporter. There is no any allegation of diversion of oil in black market on committing serious and grave irregularities, except the allegation that there is suspicion of adulteration of oil. If the petitioner ultimately finds that the oil is adulterated, appropriate action requires to be taken against the petitioner, but without completing the enquiry, I am of the opinion that the petitioner, being a registered contractor, having as many as 16

tankers and there is any scope for fulfilling the terms and conditions of the order that may be passed under Section 6-A of the Act, and therefore, imposing the condition of furnishing bank guarantee, is onerous, illegal and without any justification.

Having regard to the facts and circumstances of the case, without expressing any opinion on merits of the case, the 1st respondent is directed to release the vehicles in question in favour of the petitioner on furnishing third party security and on a condition that the petitioner shall produce the vehicles before the 1st respondent as and when required, during the course of enquiry, without any alienations, alterations and encumbrances, and the 1st respondent is also directed to return oil in favour of the Hindustan Petroleum Corporation Limited under proper acknowledgment and after taking necessary samples for the purpose of completing 6-A enquiry, subject to condition that the concerned shall produce either the oil or its value as and when directed, if any orders passed confiscating the oil as well as tankers.

With the above observations, the Writ Petition is disposed of. No order as to costs.

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V.ESWARAIAH,J

Dated: 19.12.2005

Dsr

Note:

Issue CC in three days

B/o

Dsr